EXHIBIT 1

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, May 25, 1995.

Hon. ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I understand that this morning you and the members of the Banking Committee will be considering S. 240 and that you will be offering an amendment in the nature of a substitute. While I have not had the opportunity to analyze fully the May 24th manager's amendment to the Committee print, I appreciate your leadership and efforts to address the concerns of the Commission in drafting your alternative.

The safe harbor provision in the amendment, in my opinion, is preferable to the blanket approach of H.R. 1058. It addresses a number of the concerns pertaining to the size of the safe harbor and the exclusions from the safe harbor. The Committee staff appears to be genuinely interested in the Commission's views of its draft legislation and has attempted to be responsive. I was pleased to see the latest draft deleted the requirement that a plaintiff must read and actually rely upon the misrepresentation before a claim is actionable. Your attempt to tailor the breadth of the safe harbor of the Securities Exchange Act of 1934 to the more narrow safe harbor of the Securities Act of 1933 was encouraging. However, I continue to believe that the definition should be further narrowed to parallel the items contained in my letter of May 19th. Moreover, there remain a number of troubling issues.

I continue to have serious concerns about the safe harbor fraud exclusion as it relates to the stringent standard of proof that must be satisfied before a private plaintiff can prevail. As Chairman of the Securities and Exchange Commission, I cannot embrace proposals which allow willful fraud to receive the benefit of safe harbor protection. The scienter standard in the amendment may be so high as to preclude all but the most obvious frauds. I believe that there should be a direct relationship between the level of scienter required to prove fraud and the types of statements protected by the safe harbor. My letter of May 19th indicated the discreet list of subjects that are suitable for safe harbor protection, assuming a simple ''knowing'' standard. Accordingly, if the Committee is unwilling to lower the proposed scienter level to a simple ''knowing'' standard, the safe harbor should not protect forward-looking statements contained in the management's discussion and analysis section. This would be better left to Commission rulemaking.

In addition to my concerns about the safe harbor, there is no complete resolution of two important issues for the Commission. First, there is no extension of the statute of limitations for private fraud actions from three to five years. Second, the draft bill does not fully restore the aiding and abetting liability eliminated in the Supreme Court's Central Bank of Denver opinion. I am encouraged by the Committee's willingness to restore partially the Commission's ability to prosecute those who aid and abet fraud; however, a more complete solution is preferable.

I also wish to call you attention to a potential problem with the provision relating to Rule 11 of the Federal Rules of Civil Procedure. I worry that the standard employed in your draft may have the unintended effect of imposing a ''loser pays'' scheme. The greater the discretion afforded the court, the less likely this unintended consequence may appear.

I would like to express my particular gratitude for the courtesy and openness displayed by the Committee and its staff. I hope we will continue to work together to improve the bill so as to reduce costly litigation without compromising essential investor protections.

Thank you for your consideration.

Sincerely,

ARTHUR LEVITT.

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

There being no objection, the Senate, at 12:33 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. KYL).

Mr. BROWN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRADLEY. Mr. President, I ask unanimous consent that I may proceed as if in morning business for up to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Jersey is recognized.

Mr. BRADLEY. I thank the Chair.

(The remarks of Mr. BRADLEY and Mrs. KASSEBAUM pertaining to the introduction of S. 969 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

PRIVATE SECURITIES LITIGATION REFORM ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The time from now until 3 p.m. will be reserved for debate on the Sarbanes amendment with the time to be equally divided in the usual manner.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 1477

Mr. DOMENICI. Mr. President, I have discussed this with Senator D'AMATO. Some of the time remaining will be allocated to me by him. So let me start by yielding myself 7 minutes from our side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, speaking now of the safe harbor amendment that is before us, and the safe harbor language that is in the bill, I first want to call to the Senate's attention the chilling effects on voluntary disclosure that exist today because of our failure to have an adequate safe harbor for voluntary statements about future conditions.

First:

Seventy-five percent of the American Stock Exchange CEO's surveyed have limited disclosure of forward-looking information.

That is according to an April 1994 survey.

Limited disclosure:

Seventy-one percent of more than 200 entrepreneurial companies surveyed are reluctant to discuss the companies performance. (National Venture Capital Association, 1994.)

Nearly 40 percent of investor relation personnel surveyed at 386 companies have cut back on voluntary disclosure of information to the investment community. (National Investor Relations Institute, March 1994.)

Fear of litigation is the number one obstacle to enhance voluntary disclosure by corporate managers. (Harvard Business School study, 1994.)

Less than 50 percent of companies with earnings result significantly above or below analysts' expectations released information voluntarily. That information, too, is from one of our great universities, the University of California, (November 1993.)

Mr. President, it has been asked why, originally in the Dodd-Domenici or Domenici-Dodd bills we did not have this statutory safe harbor language.

Mr. President, fellow Senators, the truth of the matter is that it has been 4 years since we first started this exercise of trying to get this law. And the final draft, more or less, of what is being alluded to as the Dodd-Domenici or Domenici-Dodd bill is 3 years old.

For those who are questioning why we do not adopt the original bill's language on safe harbor, let me just suggest that such an approach's time has come and gone. If the Senators suggesting the regulatory approach would have all come to the party 3 years ago, the bill would have been enacted. But nobody would. So what happened is we had in that bill asked that the Securities and Exchange Commission solve this problem.

Mr. President, for various reasons the Securities and Exchange Commission is not able to solve the safe harbor problem. They have had numerous hours of hearings, Commissioners are split, we are short two Commissioners. There are vacancies. Entrenched staff of that institution are arguing back and forth on philosophy and language. Meanwhile, the status quo continues, and here we sit with an unfixed safe harbor even though Congress has asked them to fix it.

Last year in appropriations, Mr. President, fellow Senators, I put in the appropriations bill report language that the SEC needed to create a new safe harbor and to report back to us by the end of the fiscal year. The provision called upon them to tell the people of this country what the safe harbor would be since the SEC wanted to develop it. They have not done it. It is almost time for another appropriations bill. And they have not done it.

Let me suggest that inaction and gridlock at the SEC do not mean we should not do something. In fact, I do

not believe that is what the current head of the SEC, Arthur Levitt is saying, that we should not do anything because we should still leave it up to them 3 years and untold numbers of hours, and hundreds of pages of testimony. So frankly, we ought to do something statutorily about the safe harbor.

The fact that it is a problem is absolutely manifold before us here today. And the fact that those very same lawyers, that small group of sharks, that sit around waiting for litigation, are fighting so hard to keep the current, ineffective safe harbor makes it patently clear that filing frivolous lawsuits when a company misses an earnings projection is one of their great slot machines. This is one situation where they just jump out there and pick up on statements that are predictions of the future, and anything that does not turn out as it was spoken as a basis to file a lawsuit.

Forward-looking statements are predictions about the future. Frequently, these lawsuits are based on past statements of future expectations.

Why do not future predictions always come true?

Mr. President, changes in the business cycle occur beyond the control of the company or their executive or their accountants. Is that fraud?

Changes in the market occur. And ask somebody why the changes have occurred and you will get as many answers as there are people you would ask. Is that fraud?

Changing the timing of an order—is that fraud?

Because forward-looking statements often involve future products, innovations, technologies of the future, failure to meet one or another expectation, is inevitable. But it should not be inevitable that a lawsuit follows. But I ask: Is each of those a fraud if you do not meet them? No. It is simply failure of a prediction about the future to come true.

Talk about the chilling effects of disclosure. I have just explained the reality of harm this ineffective policy is causing in the marketplace. And so now let me proceed to talk about the safe harbor in this bill.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DOMENICI. I yield myself 5 more minutes.

Arthur Levitt, for whom I have great respect, and he knows that, said he wanted a balanced safe harbor. The SEC has been promising this new safe harbor for at least 3 years. Arthur Levitt has said that the current safe harbor ''is a failure.''

That is not Pete DOMENICI, who proposed this bill some 4 years ago; it is Arthur Levitt saying the current safe harbor, whatever it is, is a ''failure.'' The securities litigation reform bill that Senator DODD and I introduced, directed them to make plans for, and recommend a fix to this broken safe harbor situation. We have gone through that with you already. But I can repeat again, frustrated by this lack of progress, I put language in the appropriations bill's report.

Actually, it has been 8 months since the SEC took its first step and issued a concept proposal, and still we get nothing.

So in answer to those in the Chamber, including my friend from Maryland, Senator SARBANES, who say Senator DODD, Senator DOMENICI, if you left the bill the way it was when you originally introduced it, I would be for this provision because you did not have the provision that is before the Senate today. Of course not. We have been anxiously waiting for 3 years now for the SEC to fix this. And since they have not, we believe the committee has come up with an excellent solution to this problem.

Let me go on then and cite for the RECORD a little detail about the disagreements among the Commission and various staff at the SEC just to show that there is great imbalance.

Wallman wants a meaningful safe harbor. Beese wants a strong safe harbor. The Commission is two commissioners short and there will be three empty seats soon. With new commissioners eventually coming on board, it will slow the process even further. It will be years.

The Senate bill recognized the problem at the SEC and the urgency of a meaningful safe harbor. The committee made the change and crafted a statutory safe harbor, even though the Securities Commission could not tell us how to do it. And I believe the committee have done it right. They had the benefit of this entire record before the SEC.

The main concern that Arthur Levitt has expressed to the Congress is that there should be no safe harbor for predictions about the future that were intentionally false.

The Council of Institutional Investors, the mutual fund managers, did not agree with Arthur Levitt and they had suggested that Congress go further than our bill. They argued that statements which are accompanied by warnings should be per se immune from liability. The Senate bill does not go that far.

CALPERS—the California public employees pension fund—in their testimony to the SEC, stated:

> By definition, projections are inherently uncertain. The more such statements are based on assumptions susceptible to change, the less useful they are in assessing prospective performance. Investors recognize this and appropriately discount the importance of such information when making investments. This being the case, we see no reason why investors should then be allowed to rely upon such statements in an action for fraud after their speculative nature has been fulfilled.

There is a warning that will accompany each of these statements if it is to be protected under the safe harbor created by the bill. It will clearly: say these forward looking statements are predictions; they may not come true. It may turn out that the actual results differ materially from this prediction about the future.

The Council of Institutional Investors—that is the professional people who manage these funds, people who have a fiduciary duty and high level of trust to manage pension funds—told the SEC that any safe harbor must be ''100 percent safe.'' This means that all information in it must be absolutely protected even if it is irrelevant or unintentionally, or intentionally, false or misleading.'' The bill does not go that far.

For decades, Congress has deferred to the courts in setting the contours of class action 10b–5 litigation. We are changing that in this bill, and we should not pass the buck on to anyone on something as important as safe harbor.

The chilling effect on the willingness of companies to make disclosures is bad for investors, for analysts, for professional fund managers, for retirement stewards, companies and the market in general. The high technology companies cannot grow without a meaningful safe harbor, and we provide just that.

We provide a meaningful safe harbor. That meaningful safe harbor clearly does not protect against intentional fraud and knowing misrepresentations. We have made it very specific; individuals engaging in that type of activity can not get into our safe harbor. Those statements are still actionable. So any statements on the floor that we will let people perpetrate fraud because of this statutory safe harbor, which includes knowledge, purpose and intention, that is not so. Nonetheless, you either have to have a safe harbor that works on future statements that are predictive only or you have it wide open again for litigation and we are right back where we started.

Mr. President, I yield the floor.

Mrs. FEINSTEIN. Mr. President, the safe harbor provisions of the bill have been criticized by some of my colleagues. I would like to address those criticisms by pointing out that S. 240 puts more responsibilities on companies seeking to use the safe harbor and puts more conditions on their use of the safe harbor than the SEC does in its current rules. It also goes further than a number of courts of appeals that have examined the issue of liability for forward-looking statements.

I wonder if the bill's manager would engage in a colloquy with me on this point?

Mr. D'AMATO. I would be delighted to.

Mrs. FEINSTEIN. First, S. 240 has a definition of forward-looking statement. It includes projections of revenues, statements about management's plans for the future, and statements about future economic performance of a company, among other things. Can you tell me where that definition came from?

Mr. D'AMATO. It came directly from rule 175. It is the SEC's own definition of forward-looking statements.

Mrs. FEINSTEIN. Now, the Banking Committee excluded a number of companies and a number of transactions from using the safe harbor. Can you explain why that was done?

Mr. D'AMATO. The Banking Committee made a policy decision to exclude from the safe harbor certain companies and certain transactions in which the incentives for making overly optimistic forward-looking statements might be present. It is important to note that the safe harbor does not apply to:

First, statements about a company that within the past 3 years has been convicted of certain violations of the Federal securities laws.

Second, statements made in an offering by a blank check company. These are companies that offer securities to the public, but which have no clear business plan and are therefore highly speculative.

Third, statements made by an issuer of penny stock. These are companies that sell very low priced stock, often through brokers who use high pressure sales tactics. There have been significant problems of fraud in the sale of these securities in the past.

Fourth, statements made in connection with a rollup transaction. These are transactions in which sponsors of limited partnerships attempt to combine many separate partnerships and rake off huge management fees. Congress passed legislation to address these abuses in 1990. We shouldn't allow these transactions to use the safe harbor.

Five, statements made in connection with a going private transaction. These are transactions in which a company buys back its shares from its public shareholders. Often, it involves management of the company buying back the shares.

Six, statements made in connection with the sale of mutual funds. Mutual funds simply should not be making projections. The SEC has a long series of rules governing mutual fund disclosure.

Seven, statements made in connection with a tender offer also are excluded. These often are hotly contested takeover battles, and we have decided not to give them any safe harbor protection.

Eight, statements made in connection with certain partnership offerings and direct participation programs. Very often, these are securities products put together in-house at a broker-dealer, and we think the temptation for making rosy performance projections may be too great in these cases.

Nine, statements made in connection with ownership reports under 13(d) also are excluded. These are the reports required under law by anyone who purchases 5 percent or more of a company's securities. The law also requires that they state their plans with respect to the company. The committee decided these statements should not be protected under the safe harbor.

Ten, finally, the safe harbor does not apply to forward-looking statements in the financial statements of a company.

So, to answer your question, we excluded a long list of companies and transactions from the safe harbor, because we were concerned that, in these companies and in these transactions, there might be a temptation for companies to make rosy projections.

Mrs. FEINSTEIN. The committee's bill also has a tough requirement that, in order to use the safe harbor, a company has to accompany any projection with a warning is that not correct?

Mr. D'AMATO. That is true. The bill requires that there be a clear warning that actual results may differ materially from any projection, estimate, or description of future events.

Mrs. FEINSTEIN. Then, I want to compliment the committee for its work here. Clearly this is a difficult area. We want to provide certainty for companies and encourage them to make disclosure. At the same time, we want to make sure that no one takes advantage of the safe harbor to mislead investors. You have tried to strike a balance here.

The PRESIDING OFFICER. Who yields time?

If no one yields time, the time will be deducted equally.

Mr. DOMENICI. Parliamentary inquiry, Mr. President. How much time do we have?

The PRESIDING OFFICER. The Senator still has 5 minutes 48 seconds; the other side has 18 minutes.

Mr. SARBANES. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 17 minutes remaining.

Mr. SARBANES. How much is remaining on the other side?

The PRESIDING OFFICER. About 5 minutes.

Mr. SARBANES. I thank the Chair.

Mr. President, the amendment we are about to vote on shortly is an amendment that puts into this bill the very provision that was in the bill introduced by Senators DODD and DOMENICI, which referred over to the Securities and Exchange Commission the responsibility for developing a safe harbor provision.

I have to tell you, I think it is either the height of arrogance or the height of folly to be trying to draft these standards here in the committee and in the Chamber of the Senate. Even the proponents admit this is a very complex issue. The original bill as introduced and as cosponsored provided to send this issue to the Securities and Exchange Commission in order for them to put their expertise and their rulemaking authority to work in order to develop an appropriate safe harbor provision.

Now, the Chairman of the SEC has indicated that he thinks changes need to be made with respect to safe harbor for forward-looking statements. But he has also indicated that the provision in the bill is not acceptable, that it goes much too far. And, in fact, the very morning of the markup he said in a letter to the committee, ''I cannot embrace proposals which allow willful fraud to receive the benefit of safe harbor protection.''

In other words, it is his view of the standard written in the bill that it would provide safe harbor protection for willful fraud. I challenge anyone in the Chamber to rise and defend that should be the case.

What they will try to argue is, ''No, this standard does not really permit that.'' But here is the Chairman of the Securities and Exchange Commission, in effect, saying that this standard does permit that. And he is supported in this judgment by a range of public interest groups concerned with securities regulation. The North American Securities Administrators Association has come in with respect to this matter and have indicated that they believe that the safe harbor definition should be left to the Securities and Exchange Commission. In a May 23, 1995, letter, the North American Securities Administrators Association, the Government Finance Officers Association, the National League of Cities, and nine other groups expressed the view:

> We believe the more appropriate response is SEC rulemaking in this area.

Mr. DOMENICI. Will the Senator yield?

Mr. SARBANES. Certainly.

Mr. DOMENICI. Mr. President, I stated in the Senator's absence—you can charge this to my time; I do not mean to use his—that the SEC had been trying to do this for 3 years. And last year, we put it in the appropriations bill. I said, because I was the one who wrote it in, while funding the SEC, we expect them to do it. Is it not true they have been unable to arrive at a consensus and present one that they are willing to say will work and should be adopted? Is that not true?

Mr. SARBANES. No. I think what is true is that the SEC—the Senator put it in his bill that he introduced 15 months ago, in March 1994, was when he first brought forth in statutory language the proposition that it should be referred to the SEC. The SEC, in October 1994, issued a concept release and notice of hearing. In that concept release, they invited comments to be made before the end of the year, and they also scheduled hearings to take place in February of this year, of this very year.

Now, the SEC received over 150 comments by the end of the year. They held 3 days of hearings, 2 days in Washington and 1 day in California. This, in fact, is the hearing record from those hearings conducted by the Securities and Exchange Commission. Now, as the Chairman of the Commission pointed out in a letter to the committee about the problem of working this out, he said there is a need for a stronger safe harbor than currently exists. He has

made that statement. And I think generally people accept that. The question is, who is going to write this safe harbor? Does it make sense for the Congress to be writing the safe harbor instead of the experts and the regulators who represent—who are supposed to represent the public interest in this matter to devise the safe harbor?

Mr. DOMENICI. May I ask a question?

Mr. SARBANES. Certainly.

Mr. DOMENICI. The Senator is assuming we do not have the public interest in mind when we write this?

Mr. SARBANES. We do not have the expertise.

Mr. DOMENICI. We do not?

Mr. SARBANES. We do not have the expertise of the SEC. And we do not, particularly in an area that is as difficult and complex as this one. I think that is very clear. In fact, the standard you propose in the bill was amended here on the floor by the chairman of the committee earlier today.

Mr. DOMENICI. I understand.

Mr. SARBANES. In response to criticism. If we have to define it legislatively, of course we will have to try to do that. But I invite the Senator's attention to the provisions of the bill that try to define out the safe harbor. It is obviously a very intricate and complex section. The Chairman of the Securities and Exchange Commission, upon reading this, then wrote a letter to the committee saying he could not embrace the proposal because it would allow willful fraud to receive the benefit of safe harbor protection.

So, in fact, your very bill—it is very interesting the way this bill has been structured. The proposal now before us allows the SEC to expand the safe harbor. In other words, they can provide even more of a safe harbor, but it does not allow the SEC to limit the safe harbor. So it is all a one-way voyage. It is a one-way voyage, and really giving the SEC the role that it ought to have in this situation and has been denied to them.

I think the Members are assuming an incredible responsibility here. As I pointed out earlier, the North American Securities Administrators, the Government Finance Officers, the National League of Cities, and nine other similar groups all express the view that they thought what was a more appropriate response is SEC rulemaking in this area. Now, then, I quoted earlier from the Chairman of the SEC. The Government Finance Officers Association, representing more than 13,000 State and local government financial officials, county treasurers, city managers, and so on, wrote of the safe harbor provision in the bill, and I am now quoting them:

> We believe this opens a major loophole through which wrongdoers could escape liability while fraud victims would be denied recovery.

Let me repeat that.

> We believe this opens a major loophole through which wrongdoers could escape liability while fraud victims would be denied recovery.

The North American Securities Administrators Association, which represents the 50 State securities regulators—they are really a front line of defense against securities fraud—have called the provision that is in the bill ''an overly broad safe harbor making it extremely difficult to sue when misleading information causes investors to suffer losses.''

Mr. President, I submit that the wise course of action here is to adopt this amendment. That is the provision that was originally in the bill. That is the provision that Members were acquainted with when they cosponsored the bill. Let the Securities and Exchange Commission, which has the expertise and the knowledge and the experience, deal with this very complex area and shape a proper safe harbor provision which is not subject to abuse and which is not subject to the objection of the Chairman of the Commission, who stated with respect to the provision that is in this bill that we are now trying to change:

> I cannot embrace proposals which allow willful fraud to receive the benefit of safe harbor protection.

Mr. President, I reserve the balance of my time.

Mr. DODD. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. The minority has 7 minutes, 40 seconds. The majority side has 4½ minutes.

Mr. DODD. I ask consent to have 2 minutes, if I may?

The PRESIDING OFFICER. Is the Senator from Maryland yielding?

Mr. SARBANES. Yes.

Mr. D'AMATO. Yes, certainly. I yield 2 minutes to my colleague.

Mr. DODD. Let me state again, Mr. President, there are those, I suppose, who would always say, in any matter, defer to an agency to write it. We deal with a lot of complex areas of law. This is one of them. I admit that.

But the notion inherent there is that there is in the SEC an ability to deal with this issue beyond the capacity of this body. I do not think that is necessarily true. In fact, the Commission itself is so highly divided on the issue we might wait 2 or 3 years before we get an answer. If you read the two letters from Arthur Levitt, one dated May 19 and one May 25, you would hardly recognize they are coming from the same author. In the May 19 letter, it says, this area has to be cleared up. The letter of May 25, I would call a fairly strident letter. The authors might have been different people, although they were signed by the same individual.

We have in this legislation very emphatically made it clear that for any individual who knowingly and intentionally misleads, knowingly intentionally misleads an investor, that there is no protection of safe harbor. I do not know how much more clear and explicit you can be.

The idea somehow that this is a major gaping hole by which defrauded investors are somehow going to be taken advantage of is rhetoric. We close up that loophole. We close it up by saying no misleading statements.

In fact, we go further than that. We require there be warnings in these forward-looking statements. It narrows it down to who can take advantage of safe harbor, under what circumstances, what kind of people. This is not available to stockbrokers or others. It is the issuers, and it is designed specifically to give investors the kind of information they need.

We need to encourage the issuers to step forward with their statements, not cause them to step back. It does not serve the economic interest of this country, or anyone for that matter, to be faced with that kind of a problem. That is why we included safe harbor, that is why we included the language to cut out the misleading statements. We think this is a good provision, and we urge that we stick with the language of the bill.

Mr. SARBANES. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Maryland has 7 minutes 40 seconds. The Senator from New York has 2 minutes 22 seconds.

Mr. SARBANES. Mr. President, I say to my colleague from Connecticut, I think he is being extremely unfair to the Chairman of the Securities and Exchange Commission. I think the two letters that the Chairman wrote us are perfectly consistent with one another.

I know the Senator is very involved in this legislation and very anxious to try to pass it. I differ sharply with him on that issue, but I do not think in the course of the debate he ought to, in effect, demean the Chairman of the SEC.

The letter he wrote on May 19 spelled out his very considerable concern over the safe harbor provision. I quoted from it at great length earlier in the day. I am not going to repeat that here except, for instance, he says:

> A safe harbor must be thoughtful—so that it protects considered projections, but never fraudulent ones.

He then raises a lot of questions about what safe harbor can cover, and he states right in the letter, this is the earlier letter:

> Given these complexities—and in light of the enormous amount of care, thought, and work that the Commission has already invested in the subject—my recommendation would be that you provide broad rulemaking authority to the Commission to improve the safe harbor.

That is what the amendment at the desk does. That is what this amendment does.

The Chairman then went on, since the Senator from Connecticut, or at least colleagues of his were pushing hard for statutory definition, to spell out the components that he thought ought to be in any statutory definition of safe harbor.

At that time, efforts were being made to shape this. Those efforts did not

prove fruitful and, in the end, on May 25, the morning of the markup, the Chairman wrote a letter to the committee expressing his view about the provision that is in this bill, the very provision we are now trying to change. And he said:

> I cannot embrace proposals which allow willful fraud to receive the benefit of safe harbor protection.

I think Chairman Levitt is a dedicated public servant. I think he is trying to do what is right. In his letter, he acceded to the view that something needed to be done to provide a stronger safe harbor protection, but then he raised his concerns in the nature of the protections that ought to be made. He has spent a lifetime on Wall Street. He is an experienced businessman. In fact, he quoted himself as a businessman about the problem of meritless lawsuits. He recognizes the problem of frivolous lawsuits and, in fact, has been working with the committee to try to address those. He has a sufficient removal representing the public interest as he does to be able to identify provisions in this bill which he thinks are defective.

I want the Members to realize what they are doing here. They are trying to enact a standard which the regulators—the Chairman of the Securities and Exchange Commission, the State regulators, the Government finance officers—are all telling them, ''Don't do this; don't do this.'' This is not as though we were putting into the law a standard which the regulators acceded to or thought was reasonable. They are saying, ''Don't do this, don't put this standard in.''

There are two ways to correct that. One is to refer it back to the Commission, which is exactly what was in the bill as it was introduced and a matter the Commission was working at, and that is what this amendment does. The other is to try to define the standard here. If we have to do that, I am prepared to address that subject.

I do not think that is the wise thing to do. I do not think that, frankly, with all due deference to my colleagues, that there is anyone here who really knows this law intimately and well enough in a highly complex area to write the standard. I say that with all due deference, and I include myself within those about whom I am making that judgment. So it ought not to be done in the legislation.

The initial approach by Senators DODD and DOMENICI was the correct approach, and that is what this amendment does. This amendment is word for word what was in the bill. It would provide the opportunity for the Commission, through broad rulemaking authority, to improve the safe harbor provision, and I very strongly commend this amendment to my colleagues.

I yield the floor and reserve whatever time is remaining.

Mr. D'AMATO. May I ask how much time?

The PRESIDING OFFICER. The Senator from New York has 2 minutes 22 seconds. The Senator from Maryland has 1 minute 48 seconds.

Mr. D'AMATO. Mr. President, let me refer to one of the two letters mentioned by my colleague. In the letter, sent by the Chairman of the SEC, the Chairman says:

> There is a need for a stronger safe harbor than currently exists. The current rules have largely been a failure, and I share the disappointment of the issuers that the rules have been ineffective in affording protection for forward-looking statements.

He says clearly in this letter that we have not afforded protection for forward-looking statements.

History shows that we have been waiting for 3 years for the SEC to work out the safe harbor issue. Last year, the Appropriations Committee stated that the time for the SEC to act on this had come, it said, ''We want some rules. We can wait no longer.''

The Chairman of the SEC has been working on this but it is obvious that the Commission has some concerns on the safe harbor and cannot come to a point where it publishes rules. I say the media does not know what they are writing about. What we are attempting to do with this legislation is to allow companies the flexibility to make forward-looking statements but, holding them liable if they make knowingly and intentionally misleading statements. There is no safe harbor for any untested companies and there is not safe harbor in situations where we felt the investor was at too great a risk of being mislead. To this effect, the safe harbor provision excludes IPO's, it excludes tender offers, and excludes stockbrokers. If you want a good example of legislation that goes too far, look at the House bill.

I think some of the journalists writing on this legislation, particularly those from the New York Times, have not taken the time to really understand what this legislation does. I suggest that they take some time to read the bill before they write. There is not a safe harbor that allows companies to say anything—anything, even intentionally false or misleading statements—as long as there is a disclaimer that the statement is in the safe harbor. This legislation does not institute a caveat emptor, buyer beware, attitude. I believe that would be going too far, much too far. But to say that the safe harbor in S. 240 would do this is wrong; it is wrong.

We cannot continue to allow businessmen to be held up by a handful of buccaneering barristers. That is an artful term used by my friend and colleague from Connecticut, and that is exactly what these lawyers are doing, they do not give two hoots and a holler about the stockholders. They care only about their own personal enrichment. That is why I have to oppose this amendment. I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Maryland.

Mr. SARBANES. Mr. President, I, in fact, quoted the very sentence the Senator from New York quoted from Arthur Levitt where he says, ''There is a need for a stronger safe harbor than currently exists.'' The question is, how are you going to develop that safe harbor?

This amendment says the SEC should do it. That is what the bill introduced by Senators DODD and DOMENICI on March 24, 1994, provided for. Then they say, well, the SEC has delayed. The SEC put out their concept release on safe harbor in October 1994. In other words, about 7 or 8 months ago. They received 150 responses on the safe harbor issue. That is more testimony than the Banking Committee has had on all securities litigation issues.

The SEC held 3 public hearings on the safe harbor issue in February—2 in Washington, 1 in San Francisco—62 witnesses in all: Venture capitalists, law professors, corporate executives, plaintiffs lawyers, defense lawyers, institutional investors.

Arthur Levitt says:

> There are many questions that have arisen in the course of the commission's explanation of how to design a safe harbor.

He then talks about the concept release, the comment letters, the 3 days of hearings, and his meeting personally with a wide range of groups that have an interest in the subject.

This matter should be handled by the SEC, just the way it was proposed in the original bill, which Members have cosponsored. That is what this amendment does.

I urge its adoption.

VOTE ON AMENDMENT NO. 1477

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to amendment No. 1477 offered by the Senator from Maryland.

Mr. D'AMATO. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays are ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. BOND (when his name was called). Present.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 43, nays 56, as follows:

[Rollcall Vote No. 288 Leg.]

YEAS—43

Akaka	Glenn	Moynihan
Biden	Graham	Nunn
Bingaman	Harkin	Pell
Boxer	Heflin	Pryor
Bradley	Hollings	Robb
Breaux	Inouye	Rockefeller
Bryan	Jeffords	Roth
Bumpers	Kennedy	Sarbanes
Byrd	Kerry	Shelby
Cohen	Kohl	Simon
Conrad	Lautenberg	Snowe
Daschle	Leahy	Specter
Dorgan	Levin	Wellstone
Exon	McCain	
Feingold	Mikulski	

NAYS—56

Abraham	Ford	Lugar
Ashcroft	Frist	Mack
Baucus	Gorton	McConnell
Bennett	Gramm	Moseley-Braun
Brown	Grams	Murkowski
Burns	Grassley	Murray
Campbell	Gregg	Nickles
Chafee	Hatch	Packwood
Coats	Hatfield	Pressler
Cochran	Helms	Reid
Coverdell	Hutchison	Santorum
Craig	Inhofe	Simpson
D'Amato	Johnston	Smith
DeWine	Kassebaum	Stevens
Dodd	Kempthorne	Thomas
Dole	Kerrey	Thompson
Domenici	Kyl	Thurmond
Faircloth	Lieberman	Warner
Feinstein	Lott	

ANSWERED ''PRESENT''—1

Bond

So the amendment (No. 1477) was rejected.

Mr. D'AMATO. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Maryland is recognized to offer an amendment.

Mr. DOLE. Mr. President, will the Senator yield to me for 3 minutes?

Mr. SARBANES. Certainly.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. SARBANES. Mr. President, at the end of that time I will be recognized to offer the amendment?

The PRESIDING OFFICER. That is correct.

Mr. DOLE. I thank the Senator.

NATURAL BORN KILLERS

Mr. DOLE. Mr. President, today's Boston Herald contains a shocking front-page story—a story that should send shivers down the spines of all Americans, especially those who have criticized my call to the entertainment industry to exercise good citizenship when it comes to producing films that celebrate mindless violence.

That is the headline: ''We're 'Natural Born Killers.''' There was a movie called ''Natural Born Killers.'' This is a story, the prosecutor says, where the suspects bragged about the slaying saying, ''We're natural born killers.''

''We're 'Natural Born Killers,'' the headline blares, referring to the critically acclaimed Oliver Stone film.

This is what happened. The Boston Herald story begins, and I quote:

As they changed out of their bloody clothes, the men who plunged a knife into an elderly Avon man 27 times bragged they were ''natural born killers,'' a Norfolk County prosecutor said yesterday.

''Haven't you ever seen 'natural born killers' before?,'' 18-year-old suspect Patrick T. Morse allegedly bragged to a girl after the gruesome slaying.

According to the Norfolk County prosecutor, ''This is one of the most vicious premeditated murders I have ever seen.'' And Massachusetts State Police Trooper Brian Howe said ''My understanding was that they were drawing a comparison between the characters in the movie and themselves.''

Of course, no movie caused this brutal killing in Massachusetts. We are all responsible for our own actions, period. But, at the same time, those in the entertainment industry who deny that cultural messages can bore deep into the hearts and minds of our young people are deceiving themselves. If the Boston Herald story is true, and if these are the kinds of role models that Hollywood is content to promote, then perhaps some serious soul-searching is in order in the corporate suits of the entertainment industry.

Let me just indicate again that is the headline. It is not BOB DOLE's headline. It is the headline this morning in the Boston Herald about how these young murderers bragged about attacking an old man and stabbing the person 27 times. In fact, it goes into graphic detail about the knife that was so bloody that they had to ask for a new knife.

Something is wrong in America with the entertainment industry, and maybe it is high time they took a look at themselves and put profit behind common decency.

Mr. President, I ask unanimous consent that the article from the Boston Herald be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WE'RE ''NATURAL BORN KILLERS''

As they changed out of their bloody clothes, the men who plunged a knife into an elderly Avon man 27 times bragged that they were ''Natural Born Killers,'' a Norfolk County prosecutor said yesterday.

''Haven't you ever seen 'Natural Born Killers' before?'' suspect Patrick T. Morse allegedly bragged to a girl after the gruesome slaying of 65-year-old Philip Meskinis.

Chilling details of the trio's murderous attack and their fascination with the murder spree depicted in the motion picture ''Natural Born Killers'' were revealed yesterday when Morse, 18, and Leonard Stanley, 20, were arraigned on murder charges and held without bail.

Police are scouring the Brockton area for a third suspect, Michael F. Freeman, a 20-year-old fugitive and former convict who allegedly wielded the knife that slashed Meskinis' throat early Friday morning and punctured his body with 27 stab wounds.

''I've been doing violent felonies for 20 years,'' Norfolk County prosecutor Gerald Pudolsky said after the arraignment. ''This is one of the most vicious, premeditated murders I've seen.''

After an intensive investigation that led to Morse's arrest about 36 hours after the grisly murder, and Stanley's surrender shortly after 11 p.m. Sunday, police learned in interviews with Morse and the trio's associates that the men and their female friends ''on occasion'' watched ''Natural Born Killers'' after one person bought the movie, said State Police Trooper Brian L. Howe.

''My understanding was they were drawing a comparison between the characters in the movie and themselves,'' Howe said.

In Stoughton District Court yesterday, Morse and Stanley sat expressionless as Pudolsky recited the threesome's alleged vile deeds.

''I think the only thing they're sorry about is they got caught,'' Howe said after the arraignment.

The trio allegedly started plotting the slaying at a coffee-ship in Avon after Freeman—whose handicapped mother once dated the disabled victim—told Morse and Stanley that Meskinis had money and guns stashed inside in his School Street home, Pudolsky said.

At 5 p.m. Thursday, the trio went to a girlfriend's house in Avon where they discussed ''pulling an armed invasion at Mr. Meskinis' house,'' Pudolsky said.

Armed with at least two, maybe three knives, the suspects left the girl's house in Morse's Chevrolet Cavalier at about 1:30 a.m.

''Mr. Freeman knew he was going to kill the victim and the other two went along 100 percent,'' Pudolsky said in an interview.

As Meskinis lay asleep in his bed, the men invaded his home and Freeman launched the bloody assault, jamming a knife repeatedly into the helpless man's body.

''So much blood was coming from Mr. Meskinis' body that Mr. Freeman actually lost the grip on the knife,'' Pudolsky said.

Freeman yelled to Morse for another knife and Morse complied, passing a Buck knife, Pudolsky said. The blows were so forceful that Freeman allegedly broke Meskinis' wrist and clavicle during the relentless hacking.

Stanley was ''ready, willing and able'' to assist in the bloody siege—although his attorney and relatives insisted yesterday that he was not in the bedroom during the murder.

The suspects stole a shotgun and a .22-caliber rifle, stashing them first in the woods, and later inside the girlfriend's house.

Police recovered two knives, two victim's guns and bags of bloodied clothing ditched in a dumpster behind a Brockton convenience store.

The trio returned to the woman's home where three other female friends were staying that night, police said. They stripped their bloodied clothing, and worried that they had left behind fingerprints, Morse and Freeman brazenly returned to the murder scene at abut 5 a.m. to remove evidence from ashtrays and door knobs, police said.

As Morse and Freeman sat down at 8:30 a.m. for breakfast, Stanley said he was not hungry.

But Stanley, using a glass of water, gurgled the liquid in his mouth to imitate ''the death chortle of Mr. Meskinis as his throat was being slashed,'' Pudolsky said.

ELECTIONS IN HAITI

Mr. DOLE. Mr. President, long-delayed parliamentary elections were held in Haiti last weekend. The long-suffering Haitian people deserve credit in what is a momentous step in their efforts to develop democracy. For many months, it appeared elections might never take place. Since January, President Aristide has been governing by decree because elections were not held in the constitutionally mandated period.

All reports out of Haiti indicate confusion and chaos in the electoral process. Hundreds of thousands of Haitians were waiting to vote 24 hours after polls were supposed to close. Some polling stations opened very late, and some never opened at all. An election station was burned in northern Haiti. Turnout was low.